

May 14, 2001

STATE WATER RESOURCES CONTROL BOARD
SACRAMENTO, CALIFORNIA
MAY 17, 2000

ITEM: 25

SUBJECT:

PROPOSED WATER RIGHT ORDER REGARDING PETITIONS FOR
RECONSIDERATION OF DECISION 1644 RELATING TO THE LOWER YUBA RIVER

DISCUSSION:

The State Water Resources Control Board (SWRCB) adopted Water Right Decision 1644 regarding fishery and water right issues on the lower Yuba River on March 1, 2001. Prior to adoption of the decision, the SWRCB held 27 days of evidentiary hearings and heard extensive public comments on a draft decision at public meetings on December 4, 2000, and January 11, 2001. Decision 1644 amends several water right permits and licenses and requires other actions to protect fish in the reach of the Yuba River downstream of Englebright Reservoir. The decision establishes interim and long-term instream flow requirements for protection of fall-run chinook salmon, spring-run chinook salmon, steelhead, and American shad. The decision also requires preparation of plans to reduce fish losses at two major diversion facilities and requires actions to promote release of water from Englebright Dam at temperatures that benefit anadromous fish. Finally, the decision includes several requirements to ensure that diversions of water from the lower Yuba River are made pursuant to valid water rights.

The SWRCB received 11 petitions for reconsideration of Decision 1644 within the statutory time period. The background to Decision 1644 and the issues raised in the petitions are discussed in the proposed order. California Code of Regulations, title 23, section 768 provides that a party may seek reconsideration of an SWRCB decision for any of the following causes:

- (a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- (b) The decision or order is not supported by substantial evidence;
- (c) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- (d) Error in law.

Following review of the petitions and other relevant material, the SWRCB may refuse to reconsider the decision if the petitions fail to raise substantial issues related to the causes for reconsideration in section 768. The SWRCB may also deny the petitions upon a

finding that the decision was appropriate, set aside or modify the decision, or take other appropriate action. (Cal. Code Regs., tit. 14, §769.)

The proposed order finds that three minor modifications to Decision 1644 are appropriate. The modifications are: (1) correction of a date for Brophy Water District to submit a plan to reduce fish losses at a major diversion facility; (2) addition of a provision allowing for modification of the water year designation based on the May 1 annual forecast; and (3) correction of the tables specifying minimum flows in the lower Yuba River to comply with the ramping requirements governing changes in flow releases. With those exceptions, the proposed order makes no changes in Decision 1644.

The order concludes that all parties to the proceeding had a fair hearing, that Decision 1644 is based on substantial evidence in the record, that the additional evidence available since the close of the hearing does not warrant reconsideration of Decision 1644, and that the decision is consistent with applicable law. The order concludes that the issues raised in the petitions do not warrant reconsideration and that the petitions for reconsideration should be dismissed.

POLICY ISSUE:

Should the SWRCB adopt the proposed order amending Decision 1644 and dismissing the petitions for reconsideration?

FISCAL IMPACT:

This activity is budgeted within existing resources and no additional fiscal demands will occur as a result of approving this item.

REGIONAL BOARD IMPACT:

None

STAFF RECOMMENDATION:

Staff recommends that the SWRCB adopt the proposed order.

Policy Review _____

Legal Review _____

Fiscal Review _____